

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**PREMIERE ENTERTAINMENT BILOXI, LLC
d/b/a Hard Rock Hotel & Casino Biloxi, a Delaware
Limited Liability Company**

PLAINTIFF

**U.S. BANK NATIONAL ASSOCIATION, a national
banking association, as Trustee under Series A and
Series B 10 3/4% First Mortgage Notes Due 2012
Indenture dated January 23, 2004**

PLAINTIFF INTERVENOR

V.

CIVIL ACTION NO. 1:06CV12 LTS-RJW

**JAMES RIVER INSURANCE COMPANY, an
Ohio Corporation**

DEFENDANT

MEMORANDUM OPINION AND ORDER

The Court has before it Defendant James River Insurance Company's (James River) motions to dismiss the original complaint, the first amended complaint, and the second amended complaint. The Court also has before it a motion by Plaintiff Premiere Entertainment Biloxi, LLC, (Premiere) to strike James River's motion to dismiss the original complaint and to strike James River's motion to dismiss the first amended complaint. James River's motions to dismiss addressed to the original complaint and to the first amended complaint are now moot. The second amended complaint has superceded the original complaint and the first amended complaint.

James River's motion to dismiss the second amended complaint asserts that Plaintiff Premiere has failed to state a claim upon which relief may be granted. For the reasons set out below, James River's motion to dismiss the second amended complaint will be denied.

Premiere operates the Hard Rock Casino and Resort. Premiere's property sustained extensive damage during Hurricane Katrina. The second amended complaint alleges that the hurricane damages exceeded \$193 million.

The second amended complaint alleges that Premiere purchased three layers of insurance coverage: a primary layer of \$25 million, a first layer of excess coverage of \$25 million, and a second layer of excess coverage of \$131.5 million. James River is one of the insurers who participate in the second layer of excess coverage.

The second amended complaint alleges that both the primary layer of coverage and the first layer of excess coverage have been paid. Premiere has sued James River to collect damages Premiere alleges to be within the risks insured by James River on the third layer of coverage (the second layer of excess coverage). Premiere seeks declaratory relief and damages, including punitive damages.

James River's motion to dismiss is premised on the contention that the first two layers of coverage have not been exhausted. While the original complaint and the first amended complaint were filed before the coverage of the first two layers was paid, the second amended complaint alleges that these two layers of coverage have now been paid in full. Accordingly, this argument for dismissal of the complaint is now moot.

James River also asserted that the a mortgage lender, a necessary party to this litigation, was not included in this suit. That lender has now intervened.

James River also contends that the complaint should be dismissed because it has not yet completed the process of adjusting Premiere's claim. Premiere has alleged that James River has denied coverage for certain losses that Premiere believes to be covered under the portion of the contract governing James River's liability. I am of the opinion that this matter is ripe for adjudication. It is apparent to me that under the standard applicable to a motion to dismiss under F.R.Civ.P. 12(b), Premiere has alleged a substantive cause of action against James River. There is no substantial reason this suit should not go forward.

Accordingly, it is

ORDERED

That the motion of Premiere Entertainment Biloxi, LLC, to strike the motions to dismiss the original complaint and the first amended complaint [16] is hereby **GRANTED**;

That the motion of James River Insurance Company to dismiss the original complaint [5] is hereby **DENIED AS MOOT**;

That the motion of James River Insurance Company to dismiss the first amended complaint [7] is hereby **DENIED AS MOOT**;

That the motion of James River Insurance Company to dismiss the second amended complaint [33] is hereby **DENIED**.

SO ORDERED this 28th day of July, 2006.

s/ L. T. Senter, Jr.
L. T. Senter, Jr.
Senior Judge

